Clauses 2 to 25 were added to the Bill.

Clause 26 - Amendment of Act 25 of 1946.

Interpretation Section.

THE DEPUTY CHAIRMAN: Now, we shall take up clause 26 for consideration. There are two Amendments, Nos. 1 and 2, by the Minister.

SHRI HARIN PATHAK: Madam, I am extremely grateful to the hon. Members of the House who have unanimously adopted the motion for consideration of the Central Vigilance Commission Bill, 2003, as passed by the Lok Sabha. Now, with your permission, Madam, I move the following official Amendments:

That at page 9, *for* lines 15-17, the following be *substituted* namely:-

"(d) Secretary (Coordination and Public Grievances) in the Cabinet Secretariat". -- Member;

That at page 9, line 32, *for* the words "Joint Director" the words "Superintendent of Police" be *substituted.*

The question was put and the motion was adopted.

Clause 26, as amended, was added to the Bill.

Clause 27 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI HARIN PATHAK: Madam, I beg to move:

That the Bill, as amended, be passed.

The question was put and the motion was adopted.

The Repatriation Of Prisoners Bill, 2003

THE DEPUTY CHAIRMAN: Thank you all for the cooperation. Now we will take up the Repatriation of Prisoners Bill, 2003. One hour has been allotted for it. We will finish this Bill in one hour.

श्री बालकवि बैरागी (मध्य प्रदेश) : मैडम, आप से एक प्रार्थना है कि आज शाम को साढ़े छः बजे बिस्मिल्लाह खां साहब की शहनाई का बहुत महत्वपूर्ण कार्यक्रम रखा गया है और

सबका जाना जरूरी है। बार-बार अपील हो रही है कि वहां जाना चाहिए। वे अपनी बीमारी से उठने के बाद हमारे बीच मे आए हैं। आप से यह प्रार्थना है कि आप यह जो दूसरा बिल ले रही हैं, इसको इनट्रड्यूज करवा लीजिए और कृपा करके छुट्टी दीजिए वरना हम लोगों के नगाड़े बजना शुरु हो जाएंगे।

उपसभापति : देखिए, इस बिल को बिजिनेस एडवाइजरी कमेटी ने एक घंटा दिया है। कायदे से यह बिल कल पास होना चाहिए था जैसाकि हमने कमिटमेंट किया था ।

DR. T. SUBBARAMI REDDY: Madam, we have to listen to *Shehnai*.

THE DEPUTY CHAIRMAN: You can go to that programme and listen to the *Shehnai* after you pass this Bill; otherwise, it will not be a very happy occasion for us. Let us pass this Bill in one hour. To go to the Library building, it will not taken more than two minutes.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI I.D. SWAMI) : Madam, I move:

> That the Bill to provide for the transfer for certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India, as passed by Lok Sabha, be taken into consideration.

Presently, as the august House knows, there is no legal provision in the CrPC and there is no other law whereby we can transport or repatriate prisoners languishing in jails in other countries and *vice-versa*. Most of the prisoners who are here in our jails also cannot be transferred to other countries because there is no law at present. In the absence of the legislative provision, it has become almost impossible to execute treaties and agreements with foreign Governments for transfer of convicted persons. The sentence awarded by foreign courts cannot be acted upon under the existing laws. The proposed legislation in conjuction with bilateral agreements or treaties would certainly enable this Government to transfer the foreign convicted offenders to the countries of their origin and receive the Indian citizens serving sentences and languishing for a long time in jails of other countries. This provision shall apply to the enforcement of sentences imposed before as well as after the enactment of this law.

Madam, this is a happy note that the Parliamentary Standing Committee on Home Affairs, to whom this Bill was referred to by this House, has discussed this Bill clause-by-clause in its meetings and sought some clarifications from the Ministry. After those clarifications were given,

on the basis of their deliberations and discussions and replies to their questions, the Parliamentary Standing Committee adopted all the clauses in their original form with a small, short observation which will be discussed later. So, in fact, this is an enabling law meant for implementation of the Treaties and Agreements and repatriation of Indian prisoners in the jails of foreign countries and *vice-versa*. In fact, India has already entered into initial stages with three countries, namely, U.K. France and Norway, and with as many as 14 countries, we have already done the negotiation part, and agreement has to be signed. With five other countries, we are in the proces of negotiation. All these negotiations, all these agreements, will be ratified later. But, before that stage comes, we needed a law, for which, the Repatriation of Prisoners Bill, 2003, which has been passed by the Lok Sabha, is being placed before this House for its consideration so that this Bill is considered and passed.

The question was proposed.

[THE VICE CHAIRMAN (SHRI SANTOSH BAGRODIA) in the Chair]

श्री मूल चंद मीणा (राजस्थान) : उपसभाध्यक्ष महोदय, माननीय मंत्री जी "बंदी संप्रत्यावर्तन विधेयक, 2003" को लाए हैं, इसमें मंशा तो अच्छी लगती है, क्योंकि भारत की जेलों मे और दूसरे देशों की जेलों के अंदर कई ऐसे लोगों को बंदी बना लिया गया, जिसकी चिंता भारत सरकार को भी है और विदेश की सरकारों को भी चिंता है। इन बंदियों का प्रत्यावर्तन भारतीय दंड प्रक्रिया संहिता, 1973 और दूसरी विधियों के द्वारा यह नहीं किया जा सकता था, इसको दूर करने के लिए ही मंत्री जी उन बंदियों का प्रत्यार्वर्त्तन करने के लिए ही यह विधेयक लाए हैं। लेकिन मैं मंत्री महोदय से कुछ बातें जानना चाहूंगा । अपराधी दो तरह के होते हैं जो कि हमारी और विदेशों की जेलों मे बंद हैं । एक तो वे हैं जिनको सजा सुना दी गई है, कुछ बंदी ऐसे हैं जिनकी जांच चल रही है, उनके मामले चल रहे हैं, उन पर अंतिक निर्णय नहीं हुए हैं। इन अपराधियों की कोई जाति नहीं होती । कुछ तो वास्तविक अपराधी पकड़े जाते हैं। कुछ ऐसे लोग होते हैं, जैसे भारत के लोग दूसरे देशों में जाते हैं, कोई व्यापार के लिए चला जाता है, कोई बेरोजगार होता है तो रोजगार के लिए चला जाता है, वे कुछ छोटी-मोटी गलतियां कर लेते हैं, क्योंकि उनको विदेशो मे कानून का ज्ञान नहीं रहता है और ऐसे लोगो को पकड़ कर बंद कर दिया जाता है, जो आजीवन जेलो मे पड़े रहते हैं। इस कानून के बनने के बाद उम्मीद है कि ऐसे लोगो को छुड़ाने में मदद मिलेगी। कुछ ऐसे भी अपराधी हैं, जो इस देश मे उथल-पुथल करके दूसरे देश मे चले जाते हैं। यहां भयंकर अपराध करते हैं और दूसरे देश मे जाकर छिप जाते हैं, जिनका प्रत्यार्पण नहीं कर सकते थे, हो सकता है इस कानून के बन जाने से ऐसे अपराधियों को लाने मे मदद मिले।

उपसभाध्यक्ष महोदय, माननीय मंत्री महोदय से मैं यह जानना चाहूंगा, जैसा हमारे विदेश मंत्री जी ने अभी कुछ दिन पहले कहा था कि हमने सात देशों के साथ प्रत्यार्पण संधि की

5.00 P.M.

है, पुर्तगाल के साथ भी आपने संधि की है क्योंकि इसमे पुर्तगाल भी है, लेकिन अभी भी पुर्तगाल की सरकार ने, पुर्तगाल की पुलिस ने अबू सलेम और मोनिका बेदी को जो गिरफ्तार किया था, जिनको लाने के लिए आपकी सरकार ने कोशिश भी की, उस संबंध में आज क्या स्थिति है? उनको पुर्तगाल की सरकार ने आपको क्यों नही दिया? हिन्दुस्तान में उनको क्यों नहीं भेजा? एक तो आप यह बता दे। दूसरी जानकारी आप यह दे दे कि हमारे पड़ौसी देश पाकिस्तान के अंदर हमारे बहुत बड़े अपराधी, 20 ऐसे अपराधी, जिनके लिए भारत सरकार ने पाकिस्तान सरकार से उन्हे हिन्दुस्तान को प्रत्यार्पण करने के लिए कई बार दबाव डाला, यहां तक कि हमारे देश की सरकार ने अमरीका से निवेदन भी किया, अमरीका का दबाव भी डलवाया, उसके बाद भी उन अपराधियो को पाकिस्तान हमे क्यो नही दे रहा? मंत्री महोदय यह बता दे। इसके साथ ही यह प्रत्यार्पण संधि जिन सात देशो के साथ करने की बात कही गई, हमारे विदेश मंत्री जी ने कही, उस बारे मे आप यह भी बता दें कि वे कौन कौन से देश हैं? किस किस देश के साथ आपकी यह प्रत्यार्पण संधि हुई है?

उपसभाध्यक्ष महोदय, हमारे देश मे जो लोग अपराध करके दूसरे देश मे चले जाते हैं, बहुत सारे ऐसे लोग आज भी पाकिस्तान की शरण मे हैं। इस कानून के बन जाने से आप पाकिस्तान से उन अपराधियो को लाने मे कैसे सक्षम हो पाएंगे? मैं चाहूंगा कि मंत्री जी इस बारे मे थोड़ा स्पष्ट कर दें तो मेरी जो शंकाएं हैं कि इस कानून के बन जाने के बाद भी वह बाते पूरी नही पाएंगी, वे शंकाएं दूर हो जाएंगी। एक बात मैं आपके ध्यान मे लाना चाहता हूँ कि पुर्लिया मे कुछ साल पहले घातक हथियार डाले गए थे और उस समय वहां पर एक विदेशी भी पकड़ा गया था, लेकिन मैं नहीं जानता, मेरी जानकारी मे नही है कि उस विदेशी को आपने छोड़ दिया है या जेल मे है या कहां है, कहां नहीं है। मैं जानना चाहूंगा कि वह अपराधी कहां है और जो इतने बड़े घातक हथियार डालने वाले थे, उनमे कितने लोगो को आपने पकड़ा था, कितनो को सजा हुई है? इस बारे मे भी जो थोड़ा संदेह पैदा हो रहा है, उसको भी आप स्पष्ट कर दे।

उपसभाध्यक्ष महोदय, मैं आपके माध्यम से कहना चाहता हूँ कि यह जो प्रत्यार्पण संधि बिल आप लाए हैं, इसको लाने के बाद मुझे लगता है कि हमारे मछुआरो को भी इससे मदद मिलेगी। हमारे देश के मछुआरे कई बार समुद्र मे जब जाते है तो वे सीमाएं लांघ जाते हैं क्योंकि सीमाओ का उन्हे ज्ञान नही रहता है और वे श्रीलंका या पाकिस्तान द्वारा बंदी बना लिए जाते हैं। मंत्री महोदय, मैं आपको याद दिलाना चाहूंगा कि पाकिस्तान में उन मछुआरो के साथ कैसा व्यवहार किया जाता है। जब पाकिस्तान की जेलो से ये लोग वापस यहां आते हैं तो अपनी कहानी बताते हैं कि पाकिस्तान की जेलो में उनके साथ क्या क्या घटनाएं हुई, कैसा-कैसा व्यवहार उनके साथ किया गया, जिसे सुनकर रौंगटे खड़े हो जाते हैं। पाकिस्तान के अंदर मामूली अपराध करने वाले हिन्दुस्तान के आदमी को गिरफ्तार करके बंद कर दिया जाता है, उसके हाथ-पैर काट दिए जाते हैं, अपंग कर दिया जाता है। इस कानून के बन जाने के बाद उम्मीद है कि ऐसे लोगो को राहत मिलेगी। इसके साथ ही आपने इस बिल में कुछ ऐसे क्लॉज बताए हैं, जिनके अनुसार कुछ ऐसे अपराधी हैं, जिनको हम ट्रांसफर नहीं कर सकेंगे। उनमे पहला तो यह है कि जिन्होंने इस देश की सुरक्षा, राष्ट्रहित के विरुद्ध काम किया हो, जो जेलो मे सजा काट रहे हो, उन्हे किसी प्रकार से ट्रांसफर नहीं करेंगे। दूसरा यह है कि वह व्यक्ति जिसके विरुद्ध इंटर-स्टेट के अंदर मामला लंबित हो, चाहे हमारे राज्य में इस प्रकार का अन्य

मामला न हो, उस व्यक्ति को भी रखा जाना अनिवार्य है। तीसरा यह है कि किसी अन्य अपराध मे वे अपराधी पाए गए तो उन्हे यहां से ट्रांसफर नहीं करेंगे। चौथा यह है कि इंटर-स्टेट मामले में अगर बंदी को मृत्युदंड दे दिया गया है, तो उसको भी ट्रांसफर नहीं करेंगे।

मंत्री महोदय, मैं आपकी जानकारी में यह लाना चाहूंगा कि 1971 मे बंगला देश के साथ हमारा युद्ध हुआ। बंगला देश के युद्ध में हमारे देश के 54 सैनिक अधिकारियों को पाकिस्तान ने अपनी जेलो में डाल रखा है। इनमें एक अधिकारी राजस्थान का है जिसका नाम है मनोहर पुरोहित। वह छोटी सादड़ी, चित्तौड़गढ़ जिले का रहने वाला है। आपका यह कानून बने, उसके बाद आप उन 54 अधिकारियों को लाने के लिए क्या करेंगे? इस कानून के माध्यम से आप कुछ करेंगे या पाकिस्तान सरकार पर दबाव डालकर उन सैनिकों को अपने देश के अंदर लाएंगे?

(उपसभापति पीठासीन हुई)

यह कानून बनने के बाद मुझे लगता है कि इस कानून का मानवीय पक्ष बहुत मजबूत हो जाएगा क्योंकि कई ऐसे अपराधी हैं जो छोटे-मोटे अपराधों में आजीवन कारावास भोग रहे हैं। उनके यहां आने से या वे जिस देश के हैं, उनको वहां भेजने पर वे कुछ दिनों के लिए शारीरिक, मानसिक रूप से अपने परिवार के साथ रह सकें और उनके साथ समय बिता सके...**(व्यवधान)**...

उपसभापति : मूल चन्द मीणा जी, आपने जब शुरू किया था तो कहा था कि मैं बहुत थोड़ा बोलूंगा।

श्री मूल चन्द मीणा : मैडम, मैं थोड़ा ही तो बोला हूं। मेरा भाषण खत्म हो रहा है, अगर आप बीच में बोलेंगी तो लंबा चल जाएगा।

THE DEPUTY CHAIRMAN: Please be brief. Don't make a fun of it. I am sitting on the Chair, and I have a responsibility to do. Don't laugh because that irritates me. I am doing my duty. We have to go. The Members raised the issue about Bismillah Khan. If you want to go there, then finish it.

श्री मूल चन्द मीणा : मैडम, आप नाराज मत होइए।

उपसभापति : मैं नाराज होऊंगी।

श्री मूल चन्द मीणा : मेरे कहने का मतलब यह है कि मैं खत्म कर रहा हूं। अगर आप बीच में बोलेंगी तो लंबा खिंच जाएगा।

THE DEPUTY CHAIRMAN: No, but please don't make the fun of my ringing the bell. Never do that. When I ring the bell, I ring it with all the responsibility at my command. So, don't make fun of it.

श्री मूल चन्द मीणा : मैं तो आपको हाई-कमान समझ रहा हूं। आप यहां ऊपर बैठी हो।

उपसभापति : आपकी हाई-कमान कहीं और है, यहां नहीं है।

श्री मूल चन्द मीणा : आप इस सीट पर बैठी हो, मैं आपका हुक्म मान रहा हूं लेकिन अगर आप बीच मे बोलेंगी तो लंबा हो जाएगा। मैं तो खत्म कर रहा था।

उपसभापति : अगर हुक्म मान रहे हैं तो बोलिए, खत्म करिए।

श्री मूल चन्द मीणा : महोदया, मैं माननीय मंत्री महोदय से जानना चाहूंगा कि पाकिस्तान की जेलों में हिंदुस्तान के कई निर्दोष लोगो को डाल रखा है, उनको यहां वापस लाने के लिए आपका यह बिल कितना कारगर हो सकेगा? अगर नही हो सके तो कोई दूसरा मजबूत बिल लाएं जिससे उन लोगो को पाकिस्तान की जेलो से यहां लाया जा सके। अभी एक ऐसा बिल पंजाब मे लाया गया है, उसका कितना स्वागत हुआ है। पंजाब के लोगों ने उसका बहुत स्वागत किया है। इसलिए इस बिल के माध्यम से ऐसे निर्दोष लोगों को पाकिस्तान की जेलो से छुटकारा मिल सके, यही कहकर मैं इस बिल का समर्थन करता हूं। धन्यवाद।

उपसभापति : अभय कांत प्रसाद जी, आप बोलिए। जल्दी से बोल दीजिए। इस पर ज्यादा लंबा नही बोलना है। श्री अभय कांत प्रसाद। जल्दी बोल दीजिए।

श्री अभय कांत प्रसाद (झारखंड) : उपसभापति महोदया, मैं आपका बहुत आभारी हूं कि आपने मुझे बोलने का मौका दिया। सरकार जो विधेयक ला रही है उसके लिए विशेष रूप से हम बधाई देना चाहते हैं। भारत का दृष्टिकोण प्रारम्भ से ही मानवतावादी रहा है। इसी दृष्टिकोण के आधार पर सरकार इस विधेयक को लाई है। आज बहुत सारे लोग विभिन्न कठिन परिस्थितियो मे अज्ञानतावश कोई गलती होने पर उसके कारण कई राष्ट्रों मे सजा काट रहे हैं और सही विधिक सलाह और विधि का प्रबंधन नही होने के कारण वे काफी कठिनाईयो मे फंसे रहते हैं। सरकार इस विधेयक के माध्यम से बहुत अच्छा कानून बना रही है। इससे सरकार की मानवीय संवेदनशीलता झलकती है। मैं यह महसूस करता हूं कि इस विधेयक को और भी कारगर बनाया जाए।

कई विदेशी बन्दी जो काफी लम्बे समय से हमारी जेलो मे रह रहे हैं जिनके रहने से भारत सरकार के सामने भी कई प्रकार की समस्याएं खड़ी होती हैं, उन बंदियो को हम यहां से इनके देशो की जेलो मे ट्रांसफर करे क्योकि उनको यहां रखने पर भी काफी खर्च पड़ता है और अनेक तरह की कठिनाइयो का सामना करना पड़ता है। इन सारी परेशानियो से बचने के लिए भारत सरकार का यह जो विधेयक है यह सराहनीय है। लेकिन कुछ ऐसी बात है जिनके आधार पर हम कैदी को यहां से ट्रांसफर नहीं कर सकते यदि उसने देश की प्रभुता, सुरक्षा और राष्ट्रहित के विरूद्ध काम किया है या उस व्यक्ति के विरुद्ध इंटरस्टेट मे कोई अन्य मामला लम्बित न हो। अगर वह किसी अन्य अपराध मे अपराधी पाया गया है तथा इंटरस्टेट मे उस बन्दी को मृत्युदंड दे दिया गया है तो हम उसे यहां से ट्रांसफर नही कर पाएंगे। यदि कोई व्यक्ति या उसका कोई प्रतिनिधि आवेदन देता है कि यह व्यक्ति आयु पूरी कर रहा है, शारीरिक क्षमता नही रखता है, उसको ट्रांसफर कर सकते हैं। इस तरह से यह जो विधेयक है इससे हमे काफी लाभ होने वाला है। इसमे जो त्रुटियां हैं उनका अगर हम सुधार कर दे तो यह विधेयक आज की परिस्थितियो मे काफी उपयोगी सिद्ध होगा। मैं इतना ही कह कर अपनी बात समाप्त करता हूं और आपको बहुत-बहुत बधाई देता हूं।

SHRIMATI N.P. DURGA (Andhra Pradesh): Madam Deputy Chairman, I rise to support this Bill. This is a welcome move of the NDA Government and this Bill has necessitated, in the light of hundreds of prisoners of various countries languishing in the Indian jails and hundreds of Indian prisoners languishing in the jails of other countries, especially in Pakistan, China, etc. The proposed legislation enables the Government of India to send foreign convicted persons, who are undergoing imprisonment in India to those countries and *vice-versa*.

It is not out of place to point out here that if you look at the Extradition Treaties that India entered into, since Independence, you will be surprised to know, India could enter into agreements for extraditing fugitives or prisoners with only 16 countries! This clearly shows that the Government of India is moving, especially in the area of entering into Extradition Treaties with other countries, at a snail's pace. If you look at the current situation in the country and elsewhere, we have to have more and more Extradition Treaties, especially with the Western countries and the Gulf countries, since majority of our people are working there and majority of the fugitives are hiding in the Gulf countries, UK, etc. Here, I would like to know from the hon. Minister why the Extradition Treaties entered into by India with Germany, Mongolia, Spain, Tunisia, Turkey and Ukraine under the Extradition Act, 1962, did not come into force? What are the reasons behind this? How will the Ministry ensure, in co-ordination with the Ministry of External Affairs, through diplomatic channels and at the political level to implement them?

The other point is, the treatment of Prisoners of War is an issue which concerns all of us. Here, I would like to concentrate only on Pakistan. The condition of our Prisoners of War either caught on espionage or during the course of a conflict or war or other civilian prisoners, fishermen, etc., is pathetic. Our Prisoners of War in Pakistan jails are not being treated according to Articles 13, 14 and other relevant Articles of Convention (III) of the Geneva Convention. Madam, Article 12 of the Convention says that the Prisoners of War have to be in the hands of the enemy power, but not of the individuals or military units who have captured them. But, what is happening to our Prisoners of War in Pakistan? They are all in the hands of Pakistan military or in the hands of the ISI. So, I would urge upon the Government to take necessary steps and see that, at least, our Prisoners of War are treated humanely in Pakistan jails. According to the Bill, if there is no treaty, then, you cannot transfer a prisoner. We do not have any treaty

with Pakistan and even when the hon. Home Minister, Shri L.K. Advani, proposed to General Musharraf, when he came to India, in July, 2001, he outrightly rejected the idea. So, in such circumstances, what would the Government of India do? Apart from Prisoners of War, we also have hundreds of our fishermen languishing in Pakistan jails. So, we have to take steps to bring them back to our country. There is also a problem for our countrymen who have gone in search of jobs to the Gulf countries. Sometimes, even, without knowing the law of the land, they might commit some mistakes. But, such mistakes should not be treated as grave offences and they should be released by giving a warning. So, I suggest to the hon. Minister first to concentrate on those countries, where we have many Indian prisoners and immediately enter into a treaty with those countries as soon as this Bill becomes an Act.

Then, the Bill says that the prisoners would be transferred to the State to which the prisoner belongs with a condition that the rest of the sentence will have to be undergone in the transferred State. If the provisions of both the States are not similar and if a prisoner possesses a duel citizenship, and, at the same time, there are countries where you can buyback your sentence, in such circumstances, what will happen to the prisoners whom you are going to release after this legislation comes into force. No Indian law has a provision to buyback any sentence. Or, if the laws of State to which we repatriate a prisoner are not stringent, then what will happen? In the absence of any monitoring mechanism, how will the Government of India ensure that the prisoners, who were transferred to the contracted country, are undergoing their sentences as they would have undergone in India?

Then, it is not out of place to mention here to find out from the hon. Minister as to what has happened to the Pakistan Prime Minister's 6th May, 2003, statement that 300 Indian prisoners would be handed over to India. So far, it has released only 20 prisoners.

Finally, Madam...*(Time-bell rings)*...under Clause 4, you are talking about submitting an application for transferring a prisoner by himself or any person to act on his behalf and you are issuing warrant for transfer under Clause 8, but you have not specified any timeframe within which this whole process has to be completed. For example, in UK, the process of considering application may take as long as 2-3 years to complete. I wish the hon. Minister to ponder over this and see that prisoners are released within a stipulated time and the repatriation agreements that are going to be

entered into after passing of this Bill should also specifically incorporate a provision that within a prescribed timeframe the prisoners should be released by other countries.

I hope the hon. Minister will respond to my queries while replying to the debate on this Bill. With these words, I once gain, support the Bill. Thank you.

SHRI SK. KHABIR UDDIN AHMED (West Bengal): Madam Deputy Chairperson, I thank you very much for giving me this opportunity to participate in this debate. There are no legal provisions either in the Criminal Procedure Code or in any other law under which a foreigner, convicted in India, could be transferred outside India and *vice-versa*. That procedure is being brought about in this Repatriation of Prisoners Bill, 2003. Madam, this Bill covers those persons who are convicted and sent to jail in this country and does not cover those persons who are under prosecution, under trail or any other proceeding pending against that person. I think the Ministry of Home Affairs should take necessary steps so that we can calculate the number of people who are facing trials, who are convicted and sent to jail and who are really in need of legal assistance. I would like to know from the hon. Minister as to who will bear the expenses for the repatriates. It should be made specific, at the time of framing the rules. Otherwise, this legislation cannot be enforced effectively. Then, Madam, a large number of Indians who went for employment to Saudi Arabia or UAE, Malaysia, Maldives, African countries and elsewhere were put in jails of those countries on very trivial offences. They were misused by unscrupulous elements and are being tortured like anything. The Ministry of External Affairs should follow-up this aspect so that proper assistance, well in time, is given to those Indian citizens. Madam Deputy Chairman, some Indian nationals are languishing in jails in various countries without any trial for long time. The Government should evolve a mechanism to take up such issues with Governments of those countries for speedy trial and repatriation of Indian nationals. Madam, foreigners or foreign tourists come here not only for work but also, maybe, for other reasons too. They are being sentenced for petty or serious crime and kept in Indian jails. The Bill says, "There shall be a State which is prepared to accept the prisoners and the condition required is that the remaining part of the sentence will have to be undergone in the transferred State." After getting repatriated to the other country, a prisoner should not be let out of the sentences according to their law. In that case, the sentence could be lightened and they may be let off

according to their laws. Now, these foreigners who indulged in crime in India will be freed in their own countries. This way, India may be the pasture for crimes like illegal narcotics possession business, etc. This may encourage the foreign nationals to indulge in more drug trafficking in India. However, the law prevailing in two States must be similar in every respect. This aspect should be taken care of.

Madam, in the case of Purulia arms dropping, the prime accused, Mr. Peter Bleach, who was flying the aircraft was arrested. He was charged and convicted for offences against the State. But it was reported in the newspaper that the British Prime Minister requested the Indian Deputy Prime Minister to expedite Mr. Bleach's release. We also know that on demands of the hijackers of the Indian Airlines flight to Kandahar, Maulana Masood Azhar incuding some dreaded terrorists had been set free. Madam, this provision of this Bill should not be misused. The Government will get powers to do such mischief under the cover of this amended provision of the Bill. So, the Government should exercise abundant caution in dealing with this amended provision of the Bill so that those persons should not be allowed to make an escape and back to the country of his origin.

Madam, we are a signatory to the Human Rights Commission and under that all prisoners have to be treated with dignity and honour. But, it should not be the case with those prisoners who have committed heinous crimes. Madam, the Government should consider all these aspects. I support the Bill with these limitations.

THE DEPUTY CHAIRMAN: I think, we have one hour. You can calculate how much time you will have to speak. Please, prepare your points according to it. I know you have a lot of material to speak but this is the most important thing that you should know what point you want to highlight.

SHRIMATI S.G. INDIRA (Tamil Nadu): Madam, I rise to support and speak on the Repatriation of Prisoners Bill, 2003. It is a fact that the spirit of the Bill is a humane consideration and also to help the prisoners languishing in the Indian and in foreign jails. Madam, all the prisoners cannot be clubbed together in view of the fact that many innocent prisoners are under wrongful detention. For example, many innocent Indians have been languishing in Pakistani jails. Also, many fishermen from Tamil Nadu have been languishing in Sri Lankan jails for a long time without any trial. They are crossing ignorantly our territorial waters. This should be taken into

consideration whether we are having any treaty or agreement with Sri Lanka and how it is going to be taken into account. The Chief Minister of Tamil Nadu has asked the Centre to take back Kachchateevu or take it on a permanent lease to safeguard the traditional rights of Tamil Nadu fishermen. I hope the hon. Minister will take care of the safety of Indian fishermen and will also ensure their release from foreign jails. I would like to quote clause 13(1) of the Bill, "The Central Government shall, in consultation with a State Government, determine the prison situated within the jurisdiction of such State Government...". Now, I would like to ask the hon. Minister whether this Bill is giving importance to the State Government or the convict because at the final stage, it has been mentioned in the clause that in consultation with a State Government, it will determine the prison. Has this point been considered whether a State Government is willing to receive that prisoner in their State or not?

[THE VICE-CHAIRMAN (SHRI SURESH PACHOURI) in the Chair]

And, also, I would like to ask the Minister whether the Government is having any statistical record regarding the prisoners outside India, because there is no mention about the cost, as to who is going to bear the cost and expenses. If you send 2,000 prisoners to a particular State, say Tamil Nadu, then who is going to bear the cost? Is the Central Government willing to bear the cost or extend financial help to the State Government? It is very vague in this Bill. I would like to touch an aspect regarding the punishment. It may vary from country to country. In India, we are having some limited treaties and agreements with a few countries. What about the stand of other countries regarding punishments? In our country, we can give three years' imprisonment, but it differs from other countries, especially from Gulf countries where so many Indians are languishing in jails. What steps is the Government going to take in this regard? I would like to request the hon. Minister that the ingredients of the bilateral agreements should be looked into because the time of the conviction and its execution vary from country to country. In Gulf countries, after the pronouncement of the sentence of the life, they will immediately cut off the head. But, in India, we are not doing like this. So, what action is the Government of India going to take in this regard because the way punishment is given and the period of execution vary from country to country. This point has not been mentioned in the Bill clearly. Also, this is purely a State subject. And, the willingness of the concerned State should initially be obtained and then it should be decided whether it is the State

Government or the Central Government which is going to bear the cost, because the jails in every State are full and there are no proper and basic amenities in the jails. Every State is requesting the Central Government to help them by giving financial assistance for basic amenities for the jails. So, this is an extra burden on the State Governments. So, what steps does the Government of India propose to take in this regard? *(Time-bell)* I will finish within a minute, Sir. There seems to be a lack of proportion in transferring prisoners between the countries. According to the Bill, a prisoner could be transferred if the judgement is final and no death penalty is imposed. In India, death penalty is awarded in rarest of the rare cases, and execution takes place once in a blue moon. But, in some countries, death penalty is awarded at the drop of a hat. An offence, which attracts one year sentence in India, attracts death penalty in some Gulf countries, as I have already mentioned. If an Indian citizen commits an offence in another country, and is awarded death penalty, and a citizen of that country commits the same offence in India and is awarded simple or rigorous imprisonment, while the Indian will lose his life, the foreigner will have a safe passage to his country. This is why I say that this provision will be, in a sense, disproportionate. I request the hon. Minister to inform the House as to how the Government will deal with such nations. Humane aspect cannot be a one-way affair. We also want our citizens to be treated with humane consideration in other countries. I am hopeful that the hon. Minister will favourably respond to the demand of our leader to get *Kachcha Theevu* to protect our fishermen, to take the *Kachcha Theevu* on a permanent lease. With these words, I conclude. Thank you.

प्रो0 राम देव भंडारी (बिहार) : उपसभाध्यक्ष जी, हिंदी के हिंदुस्तान समाचार पत्र मे आज मैंने एक खबर पढ़ी, "ब्रिटेन की जेलो में दो सौ से ज्यादा भारतीय कैदी।" गृह मंत्रालय की एक ताजा रिपोर्ट मे यह बात कही गई है। उपसभाध्यक्ष जी, दुनिया के कई देशो मे भारतीय नागरिक प्रिजनर्स हैं, उन पर मुकदमा भी चल रहा है और संभव है कि उनमे से कुछ को सजा भी हो गई हो। मैं मंत्री जी से यह जानना चाहता हूं कि विदेशो मे जो हमारे भारतीय दूतावास हैं, क्या उन्हें इस बात की खबर रहती है या नही कि उस देश मे कितने भारतीय नागरिक जेलो में बंद हैं, कितनो पर मुकदमा चल रहा है, कितनो को सजा हो चुकी है? आए दिन अखबारो मे खबरे पढ़ते हैं कि यहां कई फर्जी कंपनियां बनी हुई हैं जो विदेशों में नौकरी का लालच देकर लाखो रुपए लेती हैं, विदेशों में भेजती हैं और वहां किसी भी तरह से उस देश में जाकर उन्हें छोड़ देती हैं। फिर वहां की पुलिस उन्हे पकड़ लेती है और जेलों में बंद कर देती है। हमारे जो भारतीय दूतावास हैं, वे इस दिशा मे क्या कार्रवाई कर रहे हैं? मैं यह बात मंत्री जी से जानना चाहूंगा कि जो भारतीय नागरिक विदेशो में मुकदमों में फंसे हुए हैं, जेलों में बंद हैं, उनके लिए भारतीय दूतावास की क्या भूमिका है?

दूसरी बात यह है कि अगर उन्हें जेल से रिहा भी कर दिया जाता है तो उनके पास इतना साधन भी नही होता कि वे स्वयं वापस अपने देश मे आ जाएं। कई ऐसे नागरिक हैं जो छोटे मुकदमो मे फंसे हुए हैं। चूंकि वे अपने देश से बाहर हैं, वहां उन्हे कोई मदद करने वाला नही है, उन्हे कानूनी सहायता भी नहीं मिलती है इसलिए वे जेलो मे बंद रहते हैं, मुकदमो मे फंसे रहते हैं। इस दिशा में हमारे दूतावास की क्या भूमिका है? मैं यह जानना चाहता हूं कि हमारे दूतावास क्या कर रहे हैं? हमारे देश मे जो विदेशी नागरिक जेलो मे बंद हैं, यहां सजा काटने के बाद उन्हें जेलो से मुक्त कर दिया जाता है। इसमे ऐसा प्रावधान है कि वे स्वयं आवेदन दें या उनके प्रतिनिधि आवेदन दे। कई ऐसे केसेज होगे जिसमे उनका कोई प्रतिनिधि नहीं होगा। उनकी जेल काटने के बाद ऐसी स्थिति नही रहती कि वे दौड़-धूप करके आवेदन करे। यह सबसे महत्वपूर्ण बात है कि जिस देश मे वह जाना चाहता है वह देश उसे स्वीकार करने के लिए तैयार है या नही है। अगर वह देश उसे स्वीकार करने के लिए तैयार नही है तो हमारा देश उस प्रिजनर के साथ क्या करता है? ये मेरे एक-दो सवाल हैं, मैं चाहूंगा कि मेरे इन दोनो सवालो का मंत्री महोदय स्पष्ट उत्तर दें। धन्यवाद महोदय।

SHRI VAYALAR RAVI (Kerala) : Sir, I want to raise only two points. Yes, we are supporting this Bill, especially because it is regarding repatriation of prisoners. The hon. Minister is sitting here. He knows the subject also. It is regarding a few persons, may be 20 - 25, living in Kerala. They are not prisoners, but live like prisoners. It needs a humane consideration. I am appealing to the hon. Minister because we have seen how all the media carried the story of Mr. Ibrahim born in Kerala. At that time, I was the Home Minister. Pressure came from Delhi. So, I had to take up the issue with the Government of India. These people were born in India, but on some emotions, they went to Pakistan. But, their whole family is in Kerala. Only a few people remained there. They are not prisoners. When they were taken to the border, they were not accepted by the Government of Pakistan. There are only a few such cases in Kerala. With folded hands, I appeal to the hon. Minister to have a humane consideration of these cases. They are not prisoners, but they have to live like prisoners. This is a matter of humane consideration; I do not say that it is a human rights matter. But, it is purely a humane matter. After discussing the issue with the Government of Kerala, I hope, the hon. Minister will take a lenient view. Thank you.

श्री सतीश प्रधान (महाराष्ट्र) : उपसभाध्यक्ष महोदय, मैं मंत्री जी को विशेष करके धन्यवाद देना चाहता हूं कि वे यह विधेयक यहां सामने लाये हैं। इस विधेयक की बहुत आवश्यकता थी, लेकिन इसके साथ मैं यह भी बताना चाहूंगा कि यह विधेयक पूरा सक्षम नही है कि सारा काम इससे बन सके। महोदय, मैं मुंबई से आता हूं और वहां की दाउद शकील एंड कंपनी, जो अभी तक बाहर है, उनको हम यहां लाने मे नाकामयाब रहे हैं। हमारे मछुआरे समुद्र मे चले जाते हैं। वहां लाइन ऑफ कंट्रोल जैसी कोई चीज नही है। कोई भी कही भी पकड़ा

जाता है। उसको पकड़ कर ले जाने के बाद उसकी वहां हैरासमेंट की जाती है और सालों तक उसको वहीं रखा जाता है। यह बहुत चिंताजनक विषय है और इस विषय मे भी हमे सतर्क हो कर कोई प्रभावी योजना बनाने की आवश्यकता है। उपसभाध्यक्ष महोदय, अभी हमारे सांसदो का एक दल पाकिस्तान जा रहा है। ये लोग सद्भावना यात्रा के लिए जा रहे हैं। मैं उनसे गुजारिश करूंगा कि अभी तक सब जगह यह माहौल चल रहा है कि उनके सांसदो का एक गुट यहां आ कर गया, बीच में यहां से कुछ सांसद् यहां चले गए और अभी फिर दोबारा सांसदो का गुट जा रहा है। जो सांसदो का गुट जा रहा है वह जाते समय जरा यह भी ख्याल रखे कि हमारे वहां कितने भाई जो सालो से जेल मे पड़े हुए हैं, उनको वहां से वापस लाने के लिए वहां कैसी सद्भावना निर्मित करें, इसके बारे में सोचने की आवश्यकता है। अगर ऐसा वातावरण निर्माण हो जाए तो मुझे लगता है कि यह आगे के लिए बहुत अच्छा रहेगा। मैं इसके लिए उदाहरण देना चाहता हूं। जो हमारे यहां मिसिंग डिफेंस पर्सोनल्ज़ रिलेटिव्ज़ एसोसिएशन है और इस एसोसिएशन ने 1971 के युद्ध में जो हमारे बहुत सारे लोग पाकिस्तान में पकड़े गए थे, तब से लेकर अभी तक वे वहां ही हैं, इस विषय पर भी गंभीरता से विचार करने की आवश्यकता है। इंटरनेशनल जेनेवा ट्रीटी के अंदर जैसा लिखा था हमने तो उसका सम्मान किया और हमने उनके 93 हजार पाकिस्तानी सोल्जर्ज वापस लौटा दिये, लेकिन हमारे जो 2338 इंडियन आर्मी सोल्जर्ज थे, वे मिसिंग करके हमने डिक्लेयर कर दिए। उसमें से 600 लोग सिर्फ वापस लौट सके। पहली ट्रेन आई, उसके बाद दूसरी ट्रेन आई। पहली ट्रेन आने के बाद बताया गया कि ये लोग दूसरी ट्रेन में वापस आयेंगे। इंतजार करते-करते दूसरी ट्रेन आ गई, कुछ लोग आ गए, तब बताया गया कि तीसरी ट्रेन से लोग आयेंगे। लेकिन तभी से लेकर अभी तक उस तीसरी ट्रेन से आने वाले लोगो की उनके रिश्तेदार राह देख रहे हैं कि पाकिस्तान से तीसरी ट्रेन आ रही है। लेकिन आज तक वह तीसरी ट्रेन नही आई। महोदय, यह भी सोचने की आवश्यकता है कि यह तीसरी ट्रेन आज तक क्यो नहीं आ सकी? इसके लिए मैं पिछले आठ साल से प्रधानमंत्री जी के साथ और रक्षा मंत्री जी के साथ इस विषय मे पत्र-व्यवहार कर रहा हूं और सदन मे दो-तीन बार इस विषय पर बात भी कर चुका हूं। लेकिन अभी तक उसका जो नतीजा मिलना चाहिए, वह नतीजा नहीं मिल पाया।

उपसभाध्यक्ष महोदय, अभी कुछ दिनो पहले युरोप मे एक इंटरनेशनल ह्युमन राइट्स कमीशन का कन्वेंशन हुआ। हमारे एडवोकेट मिस्टर कौल वहां अटेण्ड करने के लिए गए थे और उन्होने वहां कुछ बातें कही थीं। इन बातों को करने के बाद बहुत सारे लोगों द्वारा उनसे पूछा गया और वहां जो सारे एवीडेन्स रखे गए थे, उनके सामने इंटरनेशनल कम्युनिटी के वे सब लोग अचरज में पड़ गए कि ऐसा भी हो सकता है। मैं उसमें से कुछ चंद बातें इस सदन के सामने रखना चाहता हूँ, जिन पर बहुत गंभीरता पूर्वक ध्यान देने की आवश्यकता है। वैसे मेरे पास बहुत सारे पेपर्स हैं, लेकिन समय की पाबंदी की वजह से वे सब बाते मैं यहां नहीं रख सकूंगा। उसमे से चंद बाते मैं यहां पर बताना चाहता हूँ, जो अत्यावश्यक हैं और सदन के रिकार्ड पर इन बातो को लाने की आवश्यकता है कि पाकिस्तान किस तरह से हमारे लोगों के साथ, हमारे नौजवानो के साथ, हमारे आफीसर्स के साथ व्यवहार कर रहा है। इन बातो को समझ लेने की आवश्यकता है, इसलिए ये सारे एवीडेन्स रिकार्ड में यहां रख रहा हूँ। भारत सरकार इसकी जांच करे और जांच करके देखे कि अगर इन एवीडेंस मे सच है तो मान ले और उसके मुताबिक इंटरनेशनल कम्युनिटी में जाकर इस विषय पर बात करे, वहां ठीक ढंग से अपनी बात रखे और अगर यह रिकार्ड गलत हैं तो वैसा कह दे कि यह रिकार्ड गलत है। लेकिन, मैं दावे के साथ कहता हूँ कि

इस विषय पर गंभीरता से सोचना चाहिए। हमारे मेजर अशोक सूरी के बारे मे मै आपको बताना चाहता हूँ।

"On January 6th or 7th 1972, the name of Shri Ashok Suri of Faridabad was mentioned in the radio programme of "Punjabi Darbar" in Lahore. On 26th December 1974, his father, Shri R.S. Suri had received a handwritten note dated 7.12.74 of Mr. Ashok Suri." ...**(समय की घंटी)**... सर, यह रिकार्ड पर आने दीजिए।

उपसभाध्यक्ष (श्री सुरेश पचौरी) : रिकार्ड पर लाइए, लेकिन जल्दी समाप्त करिए।

श्री सतीश प्रधान : सर, मैं जल्दी खत्म कर रहा हूं, लेकिन यह बहुत महत्वपूर्ण रिकार्ड और एवीडेन्स है कि ये लोग जिंदा थे या हैं, इसको रिकार्ड मे लाना आवश्यक है।

"On August 13, 1975 Shri R.S. Suri had received a note dated June 14/15/16, 1975 written by Shri Ashok Suri from Karachi disclosing that there were twenty officers detained in Pakistan. In 1976, Shri R.S. Suri received information from a contact that Shri Ashok Suri was captured on 2.12.71 before the actual declaration of war and that such persons on both sides were considered as "spies". Shri R.S. Suri received further information about Shri Ashok Suri having been shifted from Karachi to NWFP to Kohat, Swabi, Mardan and Malakand. Shri Mukhtiar Singh who was repatriated from Pakistan on 5.7.88 said that he is in Kot Lakhpat Jail at present."

"So far as the case of FL V.V. Tambay is concerned, the "Sunday Pakistan Observer" dated December 5, 1971 published from Dhaka, gave the Rawalpindi news on 4.12.71 that 5 Indian pilots had been captured alive till then. One of the names given was FL Tambay. Mrs. Tambay had a chance of meeting in 1978 with a Bangladeshi Naval Officer, who was taken prisoner in Pakistan during the war. In Iyallpur Jail, he had come across a person named Tambay. He even remembered that Tambay had a scar on the chin somewhat similar to the one this officer himself had. Shri Daljit Singh, S/o Shri Baro Singh who was repatriated from Pakistan on 24.3.88 had seen him at the Lahore Interrogation Centre in February, 1978." Flt. Lt. Harvinder Singh: His name was announced by Pakistan Radio on 4.12.71 that he had been captured.

उपसभाध्यक्ष (श्री सुरेश पचौरी) : समाप्त करिए, सतीश जी। रिकॉर्ड पर जो लाना चाहते हैं, वह ले आइए या तो टेबल पर रख दीजिए अगर इतना ज्यादा पढ़ना है तो।

श्री सतीश प्रधान : महोदय, और एक दूसरा ऐविडेंस है, उतना बता देता हूं।

Major Kawaljit Singh Sandhu, an Indian prisoner, released from Pakistan informed that he had met Sandhu in one of the jails and that the officer had lost one arm during the war. He was sentenced to 14 years imprisonment on charges of espionage.

Iqbal Hussain *alias* Tantir Singh, repatriated on 24.3.1988, had seen him in Kot Lakhpat Jail, Lahore. ...(Time-bell).... Sir, I have got 19 other cases.

उपसभाध्यक्ष (श्री सुरेश पचौरी) : अगर बड़ा ऐविडेंस है तो उसको टेबल पर रख दीजिए।

SHRI SATISH PRADHAN: Sir, Miss Victoria Schyeild, a BBC London Reporter, had written a book in 1978, "Bhutto Execution and Trial". She had written in that book, and I quote:

> "In addition to these conditions at Kot Lakpath, for three months, Bhutto was subjected to a peculiar kind of harassment, which he thought was especially for his benefit. His cell, separated from a barrack area by a 10-foot high wall, did not prevent him from hearing horrific shrieks and screams at night from the other side of the wall. One of Mr. Bhutto's lawyers made enquiries amongst the jail staff and ascertained that they were, in fact, Indian prisoners-of-war who had been rendered delinquent and mental during the course of the 1971 war. When the time came to exchange prisoners, the Indian Government would not accept these lunatics, who had no re-collection of their place of origin and so they were retained as prisoners to eke out their existence in Kot Lakhpath. Bhutto, discovering the precise temperament of the inmates, wrote to the jail superintendent, with a copy of the letter addressed to his lawyer (which was released by the press) requesting that they be moved - finally they were. Obviously, the authorities would not accept that Mr. Bhutto's sleep was being disturbed on purpose, but Bhutto did not forget the sleepless nights he spent and referred often to the lunatics in other letters of complaint."

महोदय, यहां का यह ऐविडेंस है। इस विषय के बारे मे जब मैंने रक्षा मंत्री जी के साथ पत्र-व्यवहार किया था तो रक्षा मंत्री जी ने मेरे पत्र का जो जवाब दिया था, उसमे से मैं कुछ बाते पढ़कर समाप्त कर रहा हूं।

"As you may be aware, ...

उपसभाध्यक्ष (श्री सुरेश पचौरी) : Operative part पढ़िए ना। "You may be aware" or "Thanks for your letter" छोड़कर operative part पढ़ दीजिए।

SHRI SATISH PRADHAN:

"which has been compiled on the basis of various representations received from the family members of the missing defence personnel, including representations from Missing Defence Personnel Relatives Association, there appears to be 54 defence personnel as prisoners of war in the custody of Pakistani authorities. However, the official position is that as per rules, all the missing defence personnel of 1965 and 1971 wars, after a lapse of 7 years, have been presumed to be killed.

"As these personnel have been presumed to be killed, they cannot be treated on duty and, as per the rules, families of these defence personnel have been given liberalised family pension, gratuity, children allowance and education allowance for children".

महोदय, ऐसी परिस्थिति मे इतने सारे जो एविडेंस हैं वे मैंने यहां बताने की कोशिश की है। मैं ये सब पेपर्स टेबल पर रखना चाहता हूं। इतना मालूम होते हुए भी सरकार को इनका पता ही नही चला और इस कारण वे वापिस नहीं लौट सके। वे खत्म हो गए या मर गए और ऐसा कह करके यह फाइल डिफेंस मिनिस्टर ने क्लोज करदी है। मैं आदरणीय गृह मंत्री जी से कहना चाहता हं कि आप इस विषय की पूरी जांच कीजिए। जो एविडेंस हैं वे यह कह रहे हैं कि ये लोग जीवित हैं और जीवित थे। तो इस विषय पर सरकार का यह कहना कि ये खत्म हो गए, यह बिल्कुल गलत है, यह सही नही रहेगा। हमे इसकी जांच करनी चाहिए अंतर्राष्ट्रीय फार्म के ऊपर और पाकिस्तान के साथ बात करते समय यह सभी एविडेंस उनके सामने रखने चाहिए और उनको आमने-सामने एक्रास दि टेबल बात करनी चाहिए। जब रेडियो के ऊपर की बात चलती है, जब अखबार की बात चलती है तो उसमे जो छप कर आया है वह सब एविडेंस मानने के लिए किसी दूसरे की परमिशन की जरूरत नही है। यह माना जा सकता है कि इतने सालो के बाद पुराना रिकार्ड अपने दफ्तर से निकलवा लिया। यही मेरा कहना है।

उपसभाध्यक्ष (श्री सुरेश पचौरी) : ये सारे पेपर्स आप माननीय मंत्री जी को दे दे ताकि वे उस पर समुचित कार्रवाई नियमानुसार कर सके।

SHRI SWARAJ KAUSHAL (Haryana): Thank you, Mr. Vice-Chairman. There are as many as 6,245 Indian prisoners in foreign jails, with Saudi Arabia topping the list followed by Pakistan, UAE and Malaysia. This is a very timely legislation and I compliment the Government for bringing forward this legislation. I believe it is a very humane legislation. I stand here to clear my conscience for one reason. Way back in 1984, a French

speaking lady, a Canadian citizen, was seeking repatriation to Canada and I opposed her repatriation to Canada. She said that she was suffering from cancer. I thought that she was faking. But she died a couple of weeks later, maybe, three or four weeks later. I regretted as to why I stood up to oppose the repatriation of that lady. When you have brought forward this legislation, I support this legislation and, I think, I have cleared my conscience.

The grounds that you have given are ill-health, mental condition and so on and I believe it is a very humane approach to the problems of prisoners. But I can't agree with you, Mr. Minister, on all counts. Probably, you may accuse me of differing with you on most of the occasions, but I try to agree with you as often as I can. When a couple of my friends referred to the Purulia arms dropping case, I am sorry, you didn't take the nation into confidence. When you repatriated the accused in the Purulia arms dropping case, I would have appreciated it, if they were Russian nationals. But, at the time when they committed the offence, at the time when they were convicted, they were Lithuanian nationals. They acquired the Russian citizenship only for the purpose of repatriation. I wouldn't mind, if they were to suffer the remaining part of the imprisonment in Russia. But you didn't impose any of those conditions and those people are moving around in a friendly country, as if they have not committed any offence whatsoever, though they indulged in a conspiracy to overthrow the Government of India. I am sorry, this was, I think, a historical blunder. But this is not the only blunder that you have committed.

The other one that comes to my mind is about the prisoners in Punjab. My sister, Shrimati Maya Singh - she is not here today - had raised a question about the prisoners, the terrorist victims, in Punjab the other day in the House. Today, you have Wasan Singh Jaffarwala and Jagajit Singh Chauhan moving around freely in Punjab and you have 450 prisoners in jail. Who are they? They are the police officers who fought against terrorists, who stood by the country. I do not know how the Government is refusing to react on this. I wake up at night and think of this. I am sorry the Government is doing nothing about it and they are forced to commit suicide.

Let me go to the other provisions of the Bill. There are two flaws which I would like to point out. Kindly read clause 12 (1). It says, "The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence or

imprisonment subject to such terms and conditions as may be agreed to between India and that State....". This is understandable. Kindly see where the flaw comes. Kindly read clause 13 (4) (c). It says, "A warrant under sub-section (2) of section 12 shall provide for -

(c) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions.....

So you will decide the nature. You will decide the term. And some court, a judicial court has decided on the sentence. Who will preside over that sentence? Who will preside over the nature of that imprisonment? It is the Central Government. It means, the executive will preside over the judicial verdicts. I do not know why the Government could not have given these powers to a judicial court and why could you not designate a judicial officer for this. You will have a Joint Secretary to the Government of India. Now the Joint Secretaries are getting a lot many powers and a lot many amenities. A Joint Secretary will preside over the verdict of a judge and he will be deciding whether it has to be reduced and in what manner and in what fashion. The same applies to clause 13 (6). It says, "If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both..." So you will decide, the executive will decide the nature, the duration and other aspects whether it is compatible or not. How is an executive officer really competent to decide whether the sentence or duration is compatible with the Indian law or not? Don't you think this power should have been given to a judicial court? I do not know which is the competent court in that country. In India also, the power to award death sentence is given even to the Deputy Commissioner in the North East. Who awards life imprisonment in the North East? Who awards death sentence in the North East? It is not a Session Judge, Mr. Minister, it is the Deputy Commissioner who decides, it is the Deputy Commissioners who awards death sentence. So in the same way, there may be a military Tribunal. Those decisions, may be that of a judicial court, may be that of a Tribunal and may be that of similar bodies. Now you want the executive to modify the judicial verdicts. Don't you think it would have been proper, if an Indian citizen, who has to suffer imprisonment, which may, in fact, be warranted, was decided by a judicial authority in this country?

I would once again say that Purulia was a mistake. The Government should not have repatriated these nationals. I hope you will keep in mind the fact that even at a time when you repatriated the Purulia

accused of Russia, there were Indian nationals suffering imprisonment in Russia. You did not take up their cause with the Russian Government. When somebody is asking for repatriation of Peter Bleech, you should ask them how come somebody can escape from this country and stay in that country and you have denied repatriation of that gentleman back to India. You would first talk about the Indian citizens before you repatriate the foreign nationals to their countries. Thank you.

SHRI I.D. SWAMI : Sir, I am grateful to all the hon. Members who have participated in this debate. I am very happy that almost all the Members have not only welcomed the Bill but have agreed that it has humane dimensions also. All these things have been kept in view while drafting this Bill. Some of the questions which have been raised may be they are not very relevant to the Bill but all the same they do concern this country, they do create anxiety in the minds of the hon. members. I would also like to address those anxieties of the Members. So far as the provisions of the law are concerned, the hon. Member, who spoke just now, has pointed out - I might just mention about it - that it is the intention of the Government, through this law, to implement the treaties and agreements which are entered into with foreign countries. If certain treaties or agreements are entered into with foreign countries, in order to comply with those treaties or to implement those agreements, there needed an enabling law. And the enabling law provides that wherever adaptability is needed, if the nature, duration of the sentence, the character of the sentence, etc., is not compatible between the two countries and there are minor differences, then, that country has the liberty to adapt that sentence. But, so far as the clemency or the remission of the sentence is concerned, certainly, that part of the jurisdiction still stays with the courts and with the transferring country. It was mentioned that in certain countries, especially, the Islamic countries, the Gulf countries, the sentence could be purchased. Certainly, if there are such provisions, then, the transferring country may not agree to that transfer at all, and that is where we say that if at all clemency has to be shown, if at all remission is to be given, that will have to be given by the courts of this country or by the Government of this country, that is, by the Rashtrapathi of this country. No other country can purchase that sentence. If we feel that the receiving country is not going to abide by our conditions, - at the time of entering into treaties, there would be agreements, there would be conditions, and at the time of transfer of prisoners also, those conditions would be mentioned - only if the receiving

Government accepts those conditions, only on those conditions, the prisoners would be repatriated.

So far as the powers of Joint Secretary are concerned, well, it is understood that so far as the warrant of handing over of prisoners is concerned, those powers are being exercised by the Joint Secretary or the executive authorities. But a Joint Secretary or an executive authority cannot change the sentence which has been given by the courts.

SHRI SWARAJ KAUSHAL: Who will decide that?

SHRI I.D. SWAMI: That would be done by the courts concerned. The courts alone can do that, or the power is with the Central Government. If the remission is there, if clemency is there, if a mercy petition is there, then, it is only the Rashtrapathi who can intervene, and the relevant procedures will have to be gone into. But if there is the reduction of sentence, the question doesn't arise because this Bill will come into operation; this transfer would take place only when the final proceedings have come to an end. Only when all the proceedings have come to an end, this Bill will apply, and only in case of those prisoners, in case of those convicts, who had finished all their appeals. Only in such cases, this Bill, which will become an Act, will come into operation, not otherwise...

SHRI SWARAJ KAUSHAL: Supposing somebody is awarded seven years in some country and the person is repatriated and you think three years' sentence is enough, who will decide that it should be three years?

SHRI I.D. SWAMI: Before the repatriation is done, before the warrant of transfer is issued, before the convict is transferred, the conditions, the law of that country, all those things will have to be given to the transferring country, and if the transferring country, say, India, feels that their law has provided for a much lesser sentence, we will not agree. That has been already provided for in the Bill. That after receiving the conditions, after receiving the provisions of the law of the other country, if they are almost the same, only then we will repatriate; otherwise, it is not necessary. It is because many a time the two countries may not agree to each other; that is, the transferring and the receiving countries may not agree despite the treaty. Then, that treaty will not be able to help those convicts of that nature. That is why the trials done by the martial law have been excluded. Also, the death penalty cases have been excluded. And, at the top of it, the provision has been made that the national interest, the security and the

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sovereignty of the country would be kept in view, before entering into any such agreement, before transferring the convict. Supposing, the convict is a terrorist and he has committed a heinous crime,...

SHRI SWARAJ KAUSHAL: In the Purulia arms drop case, all these three issues, namely, the national interest, security and sovereignty, were compromised.

SHRI I. D. SWAMI: No, they were not.

SHRI SWARAJ KAUSHAL: Yes, they were compromised. Those people indulged in arms-dropping - and, there, this Bill doesn't give you that power - and, yet, you repatriated them. Don't you think it involved issues relating to sovereignty? Don't you think it involved issues relating to terrorism? Don't you think it involved issues relating to the security of the State?

SHRI I. D. SWAMI: I am coming to the specific cases that you have cited and some other hon. Members have also cited. The Purulia arms-dropping case was mentioned by Mr. Meena and some other hon. Members also.

Now, the Purulia arms-dropping case took place. After all, all of you know very well that, for that case, even the UK Government has been trying. When our Deputy Prime Minister visited UK, a request was made to him. This subject was broached with him also, so far as Mr. Bleach was concerned. But, ultimately, the Government of India, or, the President, in his own wisdom - keeping in view the heinous crime, keeping in view that he was the main link in the conspiracy and keeping in view that he was one of the two conspirators - rejected the petition; the request was rejected; no assurance was given. That is what happened in this case. So far as Kim Davy is concerned, he is not yet available; he is absconding. So far as the case of the five Latvians was concerned, the same Mr. Bleach had approached the High Court in Calcutta, on the plea of discrimination against them, and the High Court of Calcutta had held that their case was on a different footing altogether because they were only hirelings and employees, that they were not conspirators, that they did not know where the plane was going, that they did not know for what these arms were being taken, that these things were not in their knowledge and so on. That is what the High Court had held - that the case of the Latvians was on a different

footing altogether. That is why they were let off, and they were given that pardon, not otherwise. They were given the pardon because the Government of India had gone into the whole case, the matter had been examined and, ultimately, the Government had arrived at the opinion that they were only employees and hirelings; and this opinion and the wisdom of the Government of India was upheld even by the High Court when Mr. Bleach had gone in appeal on this ground. Ultimately, his application had been rejected.

Two other cases were mentioned - that of Abu Salem and Monica Bedi. So far as Abu Salem is concerned we have got no extradition treaty with Pakistan. Of course there has been this case of 20 people and so on. But, unfortunately, so far, we have had no agreement with them. There is no such treaty with them. We have been trying hard with Pakistan and, as all of you know, on several occasions, in all our parleys, this matter had been broached by our senior Ministers with the Pakistani authorities. But, ultimately, we have not yet succeeded. In fact, Abu Salem's case and Monica Bedi's case are different. So far as Abu Salem's case is concerned, he is still under trial. His case is pending in the High Court, and if the High Court decides, he will have to undergo imprisonment. After that, he will be handed over to us on the basis of the Extradition Treaty. He would be extradited. So far as Monica Bedi's case was concerned, unfortunately, we did not succeed in the lower court. We have already filed an appeal. We have not yet given up. We are making efforts so that Monica Bedi is also extradited. These are the few cases which have been mentioned.

I think there was one particular point mentioned about the expenses - as to who will bear the expenses. That was a very important question. Well, the rules would take care of it. There can be three ways of taking care of the expenses. Either the convict, who is applying for repatriation, bears the expenses, or, the receiving-Government bears the expenses, or, the transferring-Government bears the expenses. All these three options are available. These options would be taken into consideration when the rules are framed. At the time of framing the rules, this would be decided upon.

I am once again grateful to all those hon. Members who have participated in the debate and given good suggestions. Many suggestions and many cases have been mentioned by Satish Pradhanji - the Chair has made an observation in this regard - and he will pass on those papers to me; we will certainly look into them as carefully as possible. We would

certainly take action wherever necessary. Thank you.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): The question is:

"That the Bill to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India, as passed by Lok Sabha, be taken into consideration."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI) : We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 16 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI I.D. SWAMI: Sir, I move:

That the Bill be passed.

The question was put and the motion was adopted.

MESSAGE FROM LOK SABHA

The sixth schedule to the Constitution (Amendment) Bill, 2003

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Sixth Schedule to the Constitution (Amendment) Bill, 2003, as passed by Lok Sabha at its sitting held on the 6th August, 2003."

Sir, I lay a copy of the Bill on the Table.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): The House is adjourned till 11 a.m. tomorrow, the 8th August, 2003.

The House then adjourned at seven minutes past six of the clock till eleven of the clock on Friday, the 8th August, 2003.

MGIPMRND—2917RS—19-3-2004.